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DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... DELAWARE

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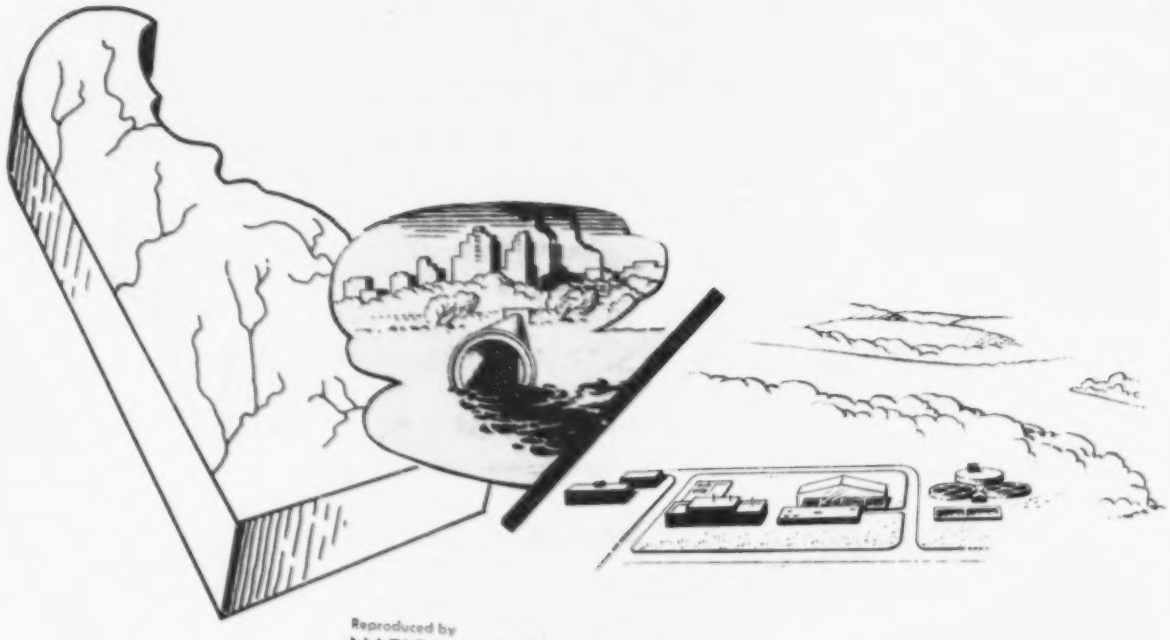

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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

10

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF DELAWARE WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

In 1949 the State of Delaware created a Water Pollution Commission, with power to exercise general supervision over the administration and enforcement of all laws relating to the pollution of the waters of the State. The Commission has been designated by statute to be the "State Water Pollution Agency" in connection with the administration of Federal Water Pollution Control Acts (Title 23, secs. 704, 708(1))[1/].

The State Board of Health also exercises some functions relating to the control of water pollution. Among these functions are the authority to adopt regulations relating to the protection of water supplies furnished to the public, and for the collection, storage and disposal of sewage and household wastes, by public authorities and individuals (Title 16, sec. 122).

II. ADMINISTRATIVE ORGANIZATION

A. Water Pollution Commission

1. Composition and organization

The Water Pollution Commission is composed of the following members: The President of the Game and Fish Commission, the President of the Delaware Commission of Shell Fisheries, the Chief Engineer of the Wilmington Water Department, the New Castle County Engineer, the Chief Engineer of the State Highway Department, the Executive Secretary of the State Board of Health, the Director of Division of Sanitation, and one representative of industry from each of the three counties of the State, to be appointed by the Governor with the consent of the Senate. The Game and Fish Commission is authorized

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1/ Citations in this digest refer to the Delaware Code Annotated (1953), and the 1956 Cumulative Supplement thereto, unless otherwise indicated.

to designate a Deputy to perform the duties of President of the Commission, and the State Board of Health is authorized to designate two Deputies to perform the duties of the Executive Secretary of the State Board of Health and of the Director of Division of Sanitation (Title 23, sec. 704).

The State Board of Health designates one of its representatives to be Secretary and Executive Officer of the Commission. The State Board of Health is authorized to act as the Administrative Agent for the Commission (Title 23, sec. 705).

The Commission holds regular meetings in January and July of each year, and holds such special meetings as are called by the Chairman, the Executive Secretary or any three members. The Commission elects a Chairman from among its members. Orders, rules or regulations become effective only upon approval of at least six members (Title 23, sec. 706).

2. Powers and duties

a) General authority

The Commission is authorized to exercise general supervision over the administration and enforcement of all laws relating to the pollution of the waters of the State (Title 23, sec. 708). "Pollution" is defined as "noxious and deleterious substances rendering unclean the waters of the State to the extent of being harmful or inimical to the public health, or to animal or aquatic life, or to the use of such waters for domestic water supply, industrial purposes, recreation, or other legitimate and necessary uses" (Title 23, sec. 703).

b) Approval of plans

The Commission may require the submission and approval of plans for the installation of systems and devices for handling, treating, or disposing of sewage, industrial and other wastes (Title 23, sec. 708(6)).

c) Enforcement

The Commission may issue general orders, adopt rules and regulations applicable throughout the State for the installation, use, and operation of systems, methods, and means for controlling the pollution of the waters of the State by sewage, industrial wastes, refuse, and other wastes. Such general orders, rules and regulations are issued only after an opportunity to be heard has been afforded interested and affected parties, and such orders take effect 30 days after publication thereof in at least one newspaper of general circulation in the State and in each county of the State (Title 23, sec. 708(4)). The Commission may also issue special orders after appropriate notice and opportunity for hearing has been granted directing particular owners, municipalities and other political entities, to secure, within a specified time, such operating results towadd the control of pollution of the waters as may be reasonable and practicable of attainment (Title 23, sec. 708(5)). Owners or persons in interest can secure a review of the necessity or reasonableness of any general or special order of the Commission by filing with the Commission a verified petition setting forth specifically the modification or change desired in the order. Upon receipt of such a petition the Commission holds a public hearing thereon and within 30 days from the filing of the petition must affirm, repeal or change the order in question (Title 23, sec. 710(1)). If the party in interest is dissatisfied with the determination made by the Commission upon the petition, he may either (1) appeal to the superior court, in which event, the court hears the matter without a jury, and it may reverse, affirm or modify the order of the Commission or remand the cause for a rehearing, or in lieu of an appeal to the court, an owner may (2) agree in writing to submit the matter to arbitration by three reputable sanitary engineers. In this event, the decision of

the arbitrators must be submitted in writing within 30 days after their selection, unless the time be extended by agreement; such decision is not binding unless agreed to by all of the arbitrators. However, the decision of the arbitrators is final and conclusive (Title 23, sec. 710)(2)(3)).

Violation of the provisions of the Act or of any general or special order of the Commission is punishable by a fine of not less than $10 nor more than $100. Each day the violation continues is a separate offense (Title 23, sec. 711).

d) Conduct of studies, investigations and research

The Commission is authorized to conduct scientific experiments, investigations, and research to discover economical and practicable methods for the elimination, disposal, or treatment of sewage, industrial wastes, and other wastes to control pollution of the waters of the State (Title 23, sec. 708(3)).

e) Cooperation with other public and private agencies

The Commission is authorized to enter into agreements with authorities of other states or of the Federal Government, subject to the approval of the Governor, relative to methods, means, and measures to be employed to control pollution of any interstate streams and other waters and to carry out such agreements by appropriate general or special orders (Title 23, sec. 708(7)). The Commission may also cooperate with any public or private agency in the conduct of scientific experiments, investigations, and research and may receive on behalf of the State any moneys which any such agency may contribute as its share of the cost under such cooperative arrangement (Title 23, sec. 708(3)).

f) Administrative powers

The Commission is authorized to hold hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of

necessary or essential data relating to water pollution. Every municipality, other political entity and any owner of an industrial establishment must, on request of the Commission, furnish such information which is reasonably necessary and pertinent required by the Commission in the discharge of its duties under the Act. Any member of the Commission or its agent when duly authorized may at reasonable times enter any industrial or municipal establishment for the purpose of inspecting and investigating conditions relating to the pollution of the waters of the State. However, no owner of any industrial or municipal establishment is required to disclose any confidential information relating to secret processes or economics of operation (Title 23, sec. 709)

3. Preservation of existing rights and remedies

Nothing in the Act is to be construed to limit or modify, in any manner, the powers and duties of the State Board of Health or the Game and Fish Commission under existing laws (Title 23, sec. 712).

4. Statement of policy

It is the public policy of the State to maintain within its jurisdiction a reasonable quality of water consistent with public health and public enjoyment thereof, the propagation and protection of fish and wildlife, including birds, mammals, and other terrestrial and aquatic life, and the industrial development of the State (Title 23, sec. 701).

B. State Board of Health

1. Composition and organization

The State Board of Health is composed of eight members. Four of such members must be physicians; one must be a dentist; and three must be women All of the members are appointed by the Governor (Title 16, sec. 102).

The Board holds a regular annual meeting on the first Thursday in April of each year. It also holds other meetings monthly or oftener if deemed

necessary. Four members of the Board constitute a quorum. The Board elects a President and appoints an Executive Secretary who must be a licensed physician. The Executive Secretary is the State Health Officer (Title 16, secs. 103-106).

2. Powers and duties

a) General

The Board supervises all matters relating to the preservation of the life and health of the people of the State. It advises officers of the State, county, or local governments in regard to drainage, and the location, drainage, and sanitary provisions of any public institution, building, or public place. The Board is authorized to regulate and prescribe the manner in which all cesspools and privy wells and other drainage systems are to be constructed within the limits of all incorporated towns and at any place within one mile from the water supply thereof. The Board is also authorized to adopt, promulgate and repeal regulations relating, among other things to:

(A) The prevention and control of nuisances;
(B) The sanitary protection of all water supplies which are furnished to and used by the public;
(C) The proper collection, storage, and disposal of sewage and household wastes, by public authorities and individuals, and to require sewage works or disposal areas to be covered in a proper manner where said sewage works or disposal areas produce or result in offensive odors being emitted (1956 Cum. Supp., Title 16, sec. 122; Title 16, secs. 122, 1501).

b) Approval of plans

All plans for the construction of water supply systems and sewage systems or additions thereto or alterations in the existing systems must be submitted to the Board for its approval before construction is commenced (Title 16, sec. 1506). It is necessary to secure the approval in writing from the Board before dug wells or other sources of private water supplies are permitted on premises accessible to a public water supply (Title 16, sec. 7931).

c) Enforcement

The enforcement authority of the Board is exercised principally through the issuance of regulations and orders, which have the force and effect of law, the violation of which may amount to a public nuisance subject to abatement and fine (Title 16, secs. 113, 125, 127).

All local boards of health, health authorities and officials, officers of the State and county institutions, police officers, sheriffs, constables, and all other officers and employees of the State, or of any county, city, or town, are required to enforce such quarantine orders, and such rules, regulations and orders as are adopted by the Board (Title 16, sec. 126).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATED TO WATER POLLUTION

It is unlawful to cast into the tide-way of the Delaware Bay or River, above Bombay Hook Island, or within half a mile of the mouth of any navigable stream between the Island and the Delaware Breakwater, or within three miles of the Breakwater, any ballast, stone, or other heavy articles. Violation is punishable by a fine of not more than $100 (Title 23, sec. 1101).

It is unlawful to discharge or permit or allow to escape into any running stream of water within the State, the water of which stream is used by inhabitants for drink or beverage purposes, any dye-stuffs, drugs, chemicals or other substance of any kind, whereby and by means whereof the water so supplied is made and becomes noxious to the health or disagreeable to the senses. Violation is punishable by a fine of not less than $1,000 nor more than $5,000. In addition, the court issues an order for abatement of the nuisance within 20 days after conviction (Title 16, sec. 1301).

It is unlawful to place or use any privy, hog-pen, or slaughter house over or so near that the excrement or offal therefrom escapes or runs into any stream of running water within the State from which the inhabitants

are furnished with water as a drink or beverage. Violation is punishable by a fine of $100, and the court orders an immediate abatement of the nuisance (Title 16, sec. 1302).

It is unlawful to wilfully put or place in the waters of the Delaware River or Bay any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or allow any dyestuff, coal or gas tar, sawdust, tan bark, coculus indicus (otherwise known as fish berries), lime refuse from gas houses, oil tanks, or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of such waters in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Violation is punishable by a fine of not more than $5,000 or imprisonment for not more than one year, or both (Title 7, sec. 912).

It is unlawful to use explosives, chemicals, poisons, devices or contrivances whetever, except as provided by law, for the purpose of taking, killing, or destroying any fish in any of the waters of the State (1956 Cum. Supp., Title 7, sec. 1111).

It is unlawful to pollute the waters of the State in any way by permitting the entry therein of any waste or deleterious substance in suffieient quantities to injure or destroy any fish or render such fish unfit for food (Title 7, sec. 1112).

IV. INTERSTATE COMPACTS

The Governor of Delaware is authorized to enter into a compact with the States of New York, New Jersey and Pennsylvania, creating the Delaware River Basin Water Commission (Title 23, sec. 901).